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8
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10 Stanley Sawyer

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 STANLEY SAWYER, an individual, and d/b/a) Civil Action No. '13CV0802 MMAMDD
12 San Diego Carburetor and San Diego Fuel)
13 Injection,)
14 Plaintiff,) COMPLAINT FOR:
15 v.) Violation of Cal. Bus. & Prof. Code §
16 PIVOTAL PAYMENTS, INC.,) 17200, *et seq.*
17 Defendant.)
18)

1 COMES NOW Plaintiff Stanley Sawyer who, based on the investigation of his counsel and
2 on information and belief, hereby complains against Defendant Pivotal Payment, Inc. ("Pivotal" or
3 the "Company"), and files this class action Complaint for himself, and on behalf of all other similarly
4 situated merchant residents and members of the general public of the State of California.

5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over the lawsuit under 28 U.S.C. § 1332(d), the Class
7 Action Fairness Act, because this suit is a class action, the parties are diverse, and the amount in
8 controversy exceeds \$5 million, excluding interest and costs.

9 2. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial
10 part of the events or omissions establishing this claim occurred in this district, Plaintiff resides in this
11 district, subscribed to Defendant's merchant credit/debit card interexchange-clearinghouse/settlement
12 services in this district, these services were provided in this district, and Plaintiff was improperly
13 charged and/or assessed Pivotal credit/debit card fees, rates and charges for these services in this
14 district.

15 3. Defendant Pivotal conducts sufficient business in San Diego, California, and
16 otherwise intentionally avail itself of the markets within this State through the advertisement,
17 promotion, marketing, and sale of its credit/debit card interexchange-clearinghouse/settlement
18 services to California merchants. Defendant's activities also constitute sufficient minimum contacts
19 to render the exercise of jurisdiction over Pivotal by this Court permissible under traditional notions
20 of fair play and substantial justice.

21 **THE PARTIES**

22 4. Plaintiff Stanley Sawyer is an individual residing in San Diego County, California
23 who, at all times relevant, has been conducting business under the dual fictitious names of San Diego
24 Carburetor and San Diego Fuel Injection at 6622 University Avenue, San Diego, California, 92115.
25 In connection with the operation of these businesses, Sawyer received payment for his services by

1 customers principally using Visa, MasterCard, Discover and American Express (“AMEX”) credit
2 and/or debit cards (hereinafter “Credit Cards”). Pursuant to a written agreement dated September
3 23, 2011, these Credit Card payments were processed by Defendant Pivotal, principally through its
4 agent bank, Merrick Bank, with the charges, rates and fees alleged herein having been deducted from
5 Plaintiff’s Credit Card receivables for automotive repair services having been duly rendered to
6 Plaintiff’s customers.

7 5. Defendant Pivotal Payments, Inc., is a Delaware corporation headquartered in
8 Melville, New York. In addition, and at all times material, Pivotal transacted business in San Diego,
9 California either directly and/or through wholly-owned subsidiaries or affiliated entities. Pivotal has
10 approved, ratified, controlled, directed and/or otherwise been legally responsible for all aspects of
11 the wrongful acts and practices of Pivotal about which Plaintiff complains of herein.

12 **STATEMENT OF FACTS PERTAINING TO DEFENDANT’S**
DECEPTIVE, UNFAIR AND IMPROPER BUSINESS PRACTICES

13 6. This action is brought by Plaintiff, both individually and on behalf of other similarly
14 situated California merchants and members of the general public, and alleges that Pivotal engaged
15 in misleading and deceptive marketing and billing practices relating to Pivotal’s Credit Card
16 interexchange-clearinghouse/settlement practices that directly resulted in Plaintiff and other
17 California merchants who used Pivotal’s services to be assessed improper fees, rates and charges
18 simply by accepting payment for their services through, *inter alia*, the customer’s Visa, MasterCard,
19 AMEX and Discover credit and debit cards.

20 7. For example, in October, 2012, alone, the amount of unauthorized and/or illegal fees,
21 rates and charges assessed against Plaintiff for his customers’ credit/debit card purchases was over
22 \$220.00 – and included such items as, *inter alia*, a “PCI Compliance Fee,” a “PCI Non-Compliance
23 Fee,” “CPS” fees, a “Signature Preferred-Retail” fee, an “Intergrity (sic) Fee,” “Merit” fees,
24 “Authorization Fees,” a “Batch Header Fee,” an “Assessment” fee, and many other fees, rates and
25 charges. None of these fees, rates or charges were disclosed in Pivotal’s standard-form MERCHANT

1 APPLICATION AND AGREEMENT executed by Plaintiff Sawyer.

2 8. Rather, they were unilaterally assessed and deducted each month by Pivotal from
3 Plaintiff's customer credit card payments, and thus represent monies that Plaintiff has been directly
4 deprived of as a result of Defendant's violations of the UCL. Cal. Bus. & Prof. Code §§ 17200, *et*
5 *seq.*

6 9. These charges were never disclosed in Defendant's marketing materials or contractual
7 agreements with Plaintiff or other Class Members in connection with the selling and/or enrollment
8 in Pivotal's credit/debit card interchange-clearinghouse and settlement services program. Instead,
9 they were only disclosed after the merchant has subscribed to Pivotal's Credit Card services, and
10 then only through an innocuous notations on the merchant's monthly credit/debit interchange-card
11 clearinghouse and settlement statement designed to obfuscate these fees, rates and charges.

12 **FACTS RELATING TO THE PLAINTIFF'S INDIVIDUAL AND CLASS CLAIMS**

13 10. Indicative as typifying the above, within the applicable statute of limitations period,
14 Plaintiff Sawyer subscribed to Pivotal's credit card clearinghouse/settlement services for purposes
15 of his automotive service and repair businesses (San Diego Carburetor and San Diego Fuel
16 Injection). When he subscribed to Defendant's credit card clearinghouse/settlement services, Pivotal
17 represented in its standard-form MERCHANT APPLICATION AND AGREEMENT that Plaintiff would only
18 be assessed a \$10.00 monthly "service fee," and credit card transaction and/or authorization
19 fees/rates/charges of .20% and .10%, respectively. Plaintiff Sawyer reviewed and relied upon these
20 written representations in making his decision to subscribe to Pivotal's credit card
21 clearinghouse/settlement services.

22 11. Thereafter, Pivotal began imposing a slew of monthly fees, rates and charges on
23 Plaintiff that had not been previously disclosed in its standard-form contracts. These
24 fees/rates/charges included, but were not limited to, Pivotal's "PCI Compliance Fee," its "PCI Non-
25 Compliance Penalty" fee, its "Intergrity (sic) Fee," its "Pivotal One" charge and separate
26

1 “Authorization Fee,” “AVS Fees,” “Batch Header Fee” and “Assessment” rate charges, and the
2 multiple tiers of “Merit” and “CPS” rates (and other fees and charges) routinely assessed against
3 merchants on a monthly basis.

4 12. In so doing, Pivotal breached its contractual obligations by failing to provide adequate
5 clear, plain and conspicuous notice of the applicable fees, rates and charges to California merchants
6 subscribing to its credit card clearinghouse services. Pivotal has also violated the UCL by failing
7 to provide adequate disclosure of these fees, rates and charges in its MERCHANT APPLICATION AND
8 AGREEMENT contracts to Plaintiff and other members of the Class who have subscribed to Pivotal’s
9 credit card clearinghouse/settlement services.

10 13. This action accordingly seeks relief on behalf of Plaintiff and other similarly situated
11 California-based merchants and, other members of the general public of this State (such as
12 Defendant’s competitors) and prays for relief from Pivotal’s violations of law, unfair, deceptive,
13 illegal and/or misleading business practices, including, *inter alia*:

14 (a) That Pivotal be enjoined from continuing with its unfair and unlawful business
15 practices as the above misconduct typifies and including prohibiting Defendant’s dissemination of
16 deceptive and misleading advertising and marketing materials to its California-based credit/debit
17 card merchants without properly disclosing Defendant’s wrongful imposition of its PCI Compliance,
18 PCI Non-Compliance Penalty and Pivotal One fees (or similar fees identified in ¶ 11, above);

19 (b) That restitution be prescribed, as appropriate, to make Pivotal’s credit card
20 merchant subscribers “whole” after being deprived of their money or property as a result of
21 Defendant’s improper and wrongful conduct;

22 (c) That Pivotal be required to disgorge its improper gain resulting from
23 misconduct directed at Class members and enjoin Defendant from continuing, pursuing or
24 recommencing these wrongful practices as described in this Complaint; and

25 (d) That Pivotal be required to pay Plaintiff and other injured Class members

1 restitution and such further or additional relief as may be directed by the Court.

2 **CLASS ACTION ALLEGATIONS**

3 14. Plaintiff brings this action on behalf of himself and all others similarly situated
4 merchants based within of this State. The Class which Plaintiff seeks to represent is composed of:

5 All California-based merchants who, within the applicable statute of limitations,
6 subscribed to Pivotal Payment, Inc.'s credit and debit card clearinghouse and
7 Settlement services, and were thereafter assessed fees, rates and/or charges for such
8 services that were not disclosed in Pivotal's standard-form MERCHANT APPLICATION
9 AND AGREEMENT (the "Class" or "Class Members"). Excluded from the Class, are
10 all persons who have accepted or received any set-off, restitution or other
11 consideration from Defendant in connection with the resolution of any of their claims
12 relating to the Pivotal's imposition of such fees, rates and charges.

13 15. The Class is composed of thousands of California-based merchants who are
14 geographically disbursed throughout this State and whose joinder in one action is impractical, and
15 the disposition of their claims in a class action will provide substantial benefits to all. The Class is
16 sufficiently numerous since the rights of each Class member that were violated in a similar fashion
17 based upon Pivotal's deceptive, improper and misleading advertisements and billing practices. Since
18 Pivotal orchestrated and controlled the wrongful acts, deceptive, improper conduct and scheme
19 complained of herein, and billed those Class members who subscribed to its credit/debit card
20 clearinghouse/settlement services, the names and addresses of the vast majority of Class members
21 are easily obtainable from Defendant's records and therefore, the Class is manageable.

22 16. There is a well-defined community of interest amongst class members in that
23 common questions of law and fact predominate over individual issues. Questions of law and fact
24 common to the Class predominate over questions which may affect particular Class members
25 include, *inter alia*, the following:

26 (a) Whether Defendant deceptively and improperly marketed and advertised its
27 credit/debit card clearinghouse and settlement services because Pivotal routinely charged PCI
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1 Assessment and Batch Header Fees (*etc.*, and/or similar fees, rates and charges) to its subscribers'
2 accounts;

3 (b) Whether Defendant's belated attempt to "disclose" the existence and terms
4 of the PCI Compliance, PCI Non-Compliance and/or Pivotal One fees after a customer has
5 subscribed and initiated its credit/debit card clearinghouse and settlement services relationship with
6 Pivotal through an inconspicuous notation on the customer's account statement is reasonable and
7 adequate;

8 (c) Whether the acts and practices of Pivotal in charging Plaintiff and other
9 members of the Class the PCI Compliance, PCI Non-Compliance and/or Pivotal One fees (or similar
10 fees, rate or charges, as partially identified in ¶ 11, above) was deceptive, fraudulent or otherwise
11 violated, *inter alia*, California Business and Professions Code §§17200, *et seq.*, and §§17500, *et seq.*,
12 and California common law and statutory laws; and,

13 (d) Whether Plaintiff Sawyer and other members of the Class have been deprived
14 of money or property, and suffered irreparable harm as a result of Pivotal's misconduct and, if so,
15 the extent of the nature of the equitable injunctive relief and restitutionary relief to which Plaintiff
16 and the Class are entitled.

17 17. Plaintiff is asserting claims typical of the claims of the entire Class and Plaintiff will
18 fairly and adequately represent and protect the interests of the Class in that he has no interests
19 antagonistic to those of other members of the Class he seeks to represent.

20 18. Plaintiff has retained counsel competent and experienced in the prosecution of class
21 action litigation.

22 19. Plaintiffs and members of the Class have suffered irreparable harm and have been
23 derived of money or property as a result of Defendant's unlawful and wrongful conduct. Absent a
24 class action, Defendant will likely retain substantial funds received as a result of its wrongdoing and
25 such unlawful and improper conduct shall go unremedied, uncorrected and will likely continue.

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1 Absent a class action, the Class members will not receive restitution and will continue to suffer
2 losses which will allow these violations of law to continue without remedy and allow Defendant
3 Pivotal to retain the proceeds of its ill-gotten gains from such unlawful and unfair business practices.

4 **COUNT ONE**

5 **(Violation of California Business and Professions Code §17200, *et seq.* -
6 Unlawful and Unfair Business Acts and Practices)**

7 20. Plaintiff Sawyer hereby incorporates by reference the allegations contained in
8 paragraphs 1 through 19, of this Complaint as though set forth at length herein.

9 21. Defendant's acts and practices as described herein constitute unlawful, deceptive,
10 misleading and unfair business acts and practices, in that: (1) Defendant's business practices, as
11 described herein, violated laws, regulations or statutory requirements; and/or (2) the justification for
12 Defendant's conduct is outweighed by the gravity of the consequences to Plaintiff, other similarly
13 situated members of the California merchant class; and/or (3) Defendant's conduct is oppressive,
14 unscrupulous or substantially injurious to Plaintiff and other similarly situated subscribers of
15 Pivotal's credit and debit card clearinghouse/settlement services; and/or (4) the uniform conduct of
16 Pivotal, as well as its misrepresentation and the underlying wrongful, false and deceptive conduct
17 alleged herein, violate California Business & Professions Code §§17200, *et seq.*

18 22. Defendant's illegal, unfair and fraudulent business acts and practices are described
19 herein include, but are not limited to, misrepresenting the nature, type, kind and/or circumstances
20 of Pivotal's credit/debit card clearinghouse and settlement services and the fees, rates and charges
applicable to the same.

21 23. Pursuant to Business and Professions Code §§17203, Sawyer, on behalf of himself
22 and other members of the Class and the general public, requests an order of this Court requiring that
23 defendant Pivotal immediately cease all acts of unfair competition in California and be enjoined from
24 continuing to conduct business in this State through business practices determined to be unlawful,
25 unfair, misleading and/or deceptive in conjunction therewith, and further order defendant to provide
26

1 for complete restitution for all California consumers along with disgorgement of all improper
2 revenue derived from Pivotal's wrongful conduct.

3 **PRAYER FOR RELIEF**

- 4 1. An order certifying that the action may be maintained as a class action;
- 5 2. On behalf of all California consumers, Plaintiff request that a temporary, preliminary
6 and/or permanent order issue providing for equitable and injunctive relief issue against Pivotal:
 - 7 (a) enjoining Pivotal from continuing or allowing continuation of the acts and
8 practices complained of herein; and
 - 9 (b) enjoining the improper acts and business practices of defendant and requiring
10 Pivotal to undertake and assume the cost of rescission and/or restitution to members of the affected
11 public entitled to a return of money as a result of Defendant's misleading and deceptive
12 advertisements and mass marketing materials regarding its fees, rates and charges for credit/debit
13 clearinghouse and settlement transactions;
- 14 3. Plaintiff seeks an order requiring that defendant disgorge the full monetary benefit
15 received as a result of any act or practice declared by this Court to be an unlawful, misleading,
16 deceptive or unfair business act or practice;
- 17 4. Pre- and post-judgment interest; and
- 18 5. Reasonable costs, expenses and attorney's fees;
- 19 6. Plaintiff Sawyer also seeks such other and further relief as this Court may deem
20 necessary or appropriate.

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JURY REQUEST

Plaintiff hereby requests a trial by jury to the full extent permitted by law.

Dated: April 3, 2013

FINKELSTEIN & KRINSKY LLP

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Attorneys for Class Plaintiff
Stanley Sawyer

CLASS ACTION COMPLAINT

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS
 Stanley Sawyer

(b) County of Residence of First Listed Plaintiff
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Mark L. Knutson
 Finkelstein & Krinsky, LLP
 501 West Broadway, Ste. 1250, San Diego, CA 92101 (619) 238-1333

DEFENDANTS
 Pivotal Payments, Inc.

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
 THE TRACT OF LAND INVOLVED

Attorneys (If Known)

'13CV0802 MMAMDD

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTY	DEF	PTY	DEF
Citizen of This State	1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 369 Other	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patents	<input type="checkbox"/> 460 Deposition
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	LABOR	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 381 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 382 Personal Injury - Medical Malpractice	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 830 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 791 Employee Retirement Income Security Act.	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 861 HJA (1395ff)	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 230 Real Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 930 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSDI Title XVI	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer w/Disabilities - Other	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 550 Civil Rights	IMMIGRATION	
		<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 462 Naturalization Application	
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 465 Other Immigration Actions	
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation
-----------------------------------------------------------	-----------------------------------------------------	----------------------------------------------------------	---------------------------------------------------	------------------------------------------------------------------------------	-----------------------------------------------------

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

12:635

VI. CAUSE OF ACTION

Brief description of cause:

Violation of Cal. Bus. & Prof. Code §17200, et seq.

VII. REQUESTED IN COMPLAINT:

(See Instructions)

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.C.P.

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See Instructions)

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OR RECORD

DATE

04/04/2013

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IPP

JUDGE

MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1335 and 1338. Suits by agencies and officers of the United States are included here.
 - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 - Original Proceedings. (1) Cases which originate in the United States district courts.
 - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 - Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.